EX PARTE OR LATE FILED

EX PARTE

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

RECEIVED

FEB 13 1998

Federal Communications Commission
Office of Secretary

February 13, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 95-116, RM 8535, Telephone Number Portability

Dear Secretary Salas:

On Thursday, February 12, 1998, representatives of Time Warner Communications Holdings Inc. ("TWComm") met with John Nakahata and Tom Power, Chief of Staff and Legal Advisor, respectively, to Chairman William E. Kennard. Representing TWComm were Don Shepheard, and Thomas Jones. Attached are copies of two outlines distributed at the meeting and which describe the substance of TWComm's presentation.

Two copies of this letter as well as the attached outlines will be filed in the above-referenced docket. Please let me know if you have any questions.

Sincerely,

Thomas Jones

Thomas Jones

cc: John Nakahata
Tom Power

No. of Copies rec'd 0+2
List ABCDE

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000
Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

TIME WARNER COMMUNICATIONS

KEY FCC ISSUES EFFECTING LOCAL COMPETITION

Donald F. Shepheard

January 12, 1998

RECEIVED
FEB 13 1998
Federal Communications Commission
Office of Secretary

Time Warner Communications is a facilities-based, competitive local exchange carrier, offering a wide range of dedicated and switched business telephony services in 19 metropolitan markets across 10 states.

- Time Warner Communications was established in 1993 to provide dedicated line services to business customers, CAP services to interexchange carriers, and switched dial tone services to residential customers.
- In 1996, the Company's strategy shifted away from the residential telephony market to an emphasis on business markets. Primary customer base includes:
  - Medium- and large-sized business end users
  - Long Distance Carriers'
  - Internet Service Providers
  - Wireless Communications Companies
  - Governmental Entities
- Time Warner Communications has aggressively deployed state-of-the-art telephony networks
  - Fully redundant, self-healing, SONET-based digital fiber optic networks constructed in each of the 19 markets.
  - 14 Lucent 5-ESS switches deployed at EOY '97. Further switch deployments planned for 1998.
- Time Warner Communications has the following competitive advantages:
  - Superior Network Reliability
  - Extensive Fiber Optic Network
  - Strategic Relationships with Time Warner and US West
  - Ability to interconnect cities within market clusters.

Time Warner Communications' competitive advantage is its investment in efficient, high-quality network facilities....

- IXC plan is to rely on unbundled elements, combined into finished services, at TELRIC prices to build critical mass for facilities investment. There will be little, if any, product differentiation, and service quality can only be as good as the ILEC network being resold. IXCs plan to build critical mass by leveraging their long-distance customer base and their strong brand identity.

- In contrast, Time Warner Communications and other facilities-based CLECs are investing in facilities that will provide customers with lower-cost, higher-quality telephony services, but which take time to achieve scale economies.

- Time Warner Communications cannot adopt the ATT/MCI/WorldCom UNE strategy, as it has no established telecom customer base and lacks a powerful telephony brand identification. *Time Warner Communications competitive strength is in its network.*

Key Federal Policy Issues impacting Time Warner Communications' ability to compete....

- Commission needs to clarify that ISP traffic is *local* traffic for purposes of reciprocal compensation under its current rulings.
  - Revenue/Cash Flow stake is significant for new entrants.
  - In the absence of FCC clarification, CLECs must pursue costly complaints state-by-state.
  - Potential for states to split on interpretation of the applicability of FCC Rules to reciprocal compensation.

- The industry urgently needs competitively neutral number portability cost recovery rules.

- Regulatory policies must maintain a reasonable balance among the three forms of competitive entry.

- The Commission need not abandon its market-based approach toward Access Reform.
  - Price Cap modifications will insure continued price reductions until competition fully develops.

LOCAL NUMBER PORTABILITY
COST RECOVERY
CC Docket No. 95-116

Don Shepheard

Time Warner Communications

February 12, 1998

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- *All Telecommunications Carriers Should Pay for Local Number Portability*
  - This is a statutory requirement under Section 251(e)(2)
  - It is also sound policy. Since virtually all consumers of telecommunications services benefit from LNP, all such consumers should support the upgrade.
    - All local exchange customers benefit from LNP. Even those that never switch carriers will benefit from better service and lower prices caused by the competition that LNP makes possible.
    - Long distance customers will benefit from lower access charges that will result from the competition made possible by LNP.

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- ***The FCC Has Considerable Discretion in Setting Rules for LNP Cost Recovery Among All Telecommunications Carriers***

  - **Agencies have discretion where acting pursuant to an explicit delegation of authority ("as determined by the Commission") to implement an ambiguous standard such as "comptitively neutral."**

  - **Many ILECs have incorrectly suggested that the "competitively neutral" standard <u>requires</u> that each carrier pay the same amount to support LNP.**

  - **The FCC has already established a definition of competitively neutral that permits more flexibility:**

    - **One service provider should not be given an appreciable, incremental cost advantage over another service provider.**

    - **Should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.**

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- *All Carriers Should Pay* Category 1 *Costs Based on Their Obligation to Support School, Library, and Rural Health Care Subsidies.*
  - **The FCC has already determined that this is a competitively neutral cost recovery mechanism in the universal service order.**
  - **Given that LNP is essential for local competition, it makes sense to base contribution obligations on intrastate, as well as interstate revenues.**
  - **Contribution mechanism in place at national level and could readily be adapted to regional level.**
  - **The FCC should not adopt transaction-based charges:**
    - **Most SMS transactions are not discretionary, so requiring payments on a per-SMS transaction basis will not improve efficiency.**
    - **Disproportionately affects new entrants.**

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- ***Carriers Should Be Required to Bear Their Own* Category 2 *Costs***

  - **All competitors in the local market (as well as IXCs) will be required to incur costs for LNP upgrades.**

  - **TWComm has significant LNP upgrade costs, and has fewer customers from whom to recover them than do the ILECs.**

    - **Does not provide an appreciable competitive advantage**
    - **Does not impede ability to earn normal returns**

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- *The FCC Should Not Adopt Pooling for Category 2 Costs*
  - **Creates incentives for including non-category 2 costs and for each carrier to maximize its return from the pool;**
  - **Reduces incentive to make upgrades in most efficient manner;**
  - **Penalizes more efficient carriers by requiring them to pay for less efficient carriers' upgrades;**
  - **Wastes scarce administrative resources by increasing need for regulatory oversight of all LECs reporting costs;**
  - **Likely to increase already high cost of local market entry;**
  - **PacTel, Amertech, and US West all agree that this is an inefficient approach (See 8/16 Comments).**

LOCAL NUMBER PORTABILITY COST RECOVERY
TIME WARNER COMMUNICATIONS

- **LNP Costs Should be Amortized over a 3-5 Year Period.**
- **Two Options for Jurisdictional Treatment:**
  - **All costs allocated to the interstate jurisdiction**
    - **Recovery via interstate surcharge on end-user lines**
  - **Separations allocation to both jurisdictions**
    - **Interstate recovery via end-user surcharge**
    - **Considerable latitude required for State recovery:**
      - **End-User Surcharge**
      - **Service Prices**
      - **Infrastructure Commitments**
- **Surcharges should be non-mandatory, but uniformly applied across <u>all</u> end-user lines.**